Financial Services Management

Credit-Card Late Fees

Cite

CFPB, Advance Notice of Proposed Rulemaking (ANPR), Credit Card Late Fees and Late Payments

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Impact Assessment

- Eliminating the manner in which current fees are set and the inflation safe harbor would put the Bureau into the price-setting business. Based on how it chooses to do so, consumers could benefit but credit cards could become still more expensive unless the Bureau seeks also to govern rates and/or rewards. Even then, providers might simply exit some or all of the business, especially if fee-setting goes beyond late fees.

Overview

Taking the first concrete action following its new policy on "junk fees," [1] the CFPB has sought public comment on whether and how to govern credit-card late fees and broader practices related to late payments. The ANPR's focus is directly on inflation adjustments permitted for these fees under current rules, but it notes broader interest in other fees, extending questions to the entire construct of credit-card pricing, profit, services, and fees. The proposal itself indicates no policy direction, but Director Chopra made it clear when this was issued that he believes current late fees are far too high. To the extent this rulemaking reverses current standards, consumers would benefit, but some might become more willing to let bills go unpaid and risks and costs might rise, leading card offerings to become less attractive.

Impact

In addition to advancing work on financial fees, the proposal is the CFPB's first specific action following its director's announcement that the agency will review rules inherited from the Federal Reserve Board to which it has not yet turned.[2] The agency

1 See **CONSUMER38**, *Financial Services Management*, February 1, 2022.

2 See *Client Report* **CONSUMER42**, April 28, 2022.

here tackles rules mandated by 2009 credit-card law,[3] but it has broader plans to look at standards such as rules under the Electronic Funds Transfer Act.

The scope of this ANPR combined with Director Chopra's overall policy suggests that these and other possible regulatory reviews could lead to a paradigm shift in the U.S. consumer-finance regulatory framework. This would favor direct federal standards for permissible fees and practices rather than almost sole reliance on disclosures and sharply redefine not only the regulatory construct, but likely also products and services available across the spectrum of consumer finance subject to the CFPB. This may be broader than once understood given the agency's assertion of "dormant" authority over nonbanks.[4]

The ANPR's immediate focus is on credit-card late fees, looking specifically at a provision in the current Fed rule affording immunity from enforcement actions if a late fee is initially set in a reasonable and proportional way and is subsequently adjusted to reflect inflation without the need for a lender to conduct a new calculation to ensure that the fee – now set by rule at a base rate of $30 – remains reasonable and proportional. In his comments accompanying release of this ANPR, Director Chopra made it clear that he believes the base rate set by the Fed over a decade ago is unduly high and that lenders may use high rates of inflation now to push late-payment fees to levels that are in fact neither reasonable nor proportional given the actual risks and costs associated with late payment.

To the extent the Bureau resets these fees, credit-card interest rates and rewards could be realigned in ways that adversely affect cardholders who generally or even always make payment in full on required minimum amounts or their entire balances. The social-policy benefits of shifting costs in this fashion on a consumer-finance product raises complex equality, inclusion, and access questions not addressed in the questions posed by this ANPR.

What's Next

The Bureau released this ANPR on June 22; comments are due by July 22. That said, this ANPR is actually far more of a request for information than the outline of specific actions requiring a formal rulemaking that would need to go through at least one more public-notice-and-comment round. Express changes to the current rules and the safe harbor do require a formal rulemaking. However, it is possible that the agency plans interventions by way of its interpretive rulemakings, advisories, or examination-manual updates which it believes to be exempt from these more time-consuming administrative procedures.

Analysis

Questions are posed on:

- Keep Factors that issuers use to set fees for newly-delinquent borrowers on a per-incident basis. As elsewhere in this ANPR, issuers are asked to provide extensive detail and how they assure that fees are proportional, with the Bureau asking also if revenue or other goals factor into fee calculations;

3 See *Client Report* **CREDITCARD34**, May 7, 2009.

4 See **CONSUMER41**, *Financial Services Management*, April 27, 2022.

- Factors used to set fees on previously-delinquent cardholders, with questions here echoing those above;
- Costs and losses, with the Bureau seeking an array of data on these with regard to late fees. Cardholders are asked also to comment about the costs associated with late fees from their perspective;
- How issuers contact borrowers about loan status other than via periodic statements and what grace fees may be afforded;
- When delinquencies are reported to credit reporting agencies and debt collectors;
- Late-payment prevalence;
- Research on the extent to which late-payment fees deter delinquencies;
- Any other issuer-imposed consequences of late payment;
- Other methods to deter late payments that would be less costly to borrowers;
- How cardholders are categorized based on payment history;
- Other factors to consider with regard to the safe harbor;
- Card features such as autopay and resulting consumer risks along with product expenses and other data; and
- Overall credit-card revenue and its components (e.g., interchange fees, late-payment fees).

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